

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	CC Docket No. 96-45
Federal –State Joint Board on	)	
Universal Service	)	

**COMMENTS OF ILLINOIS VALLEY CELLULAR  
RSA 2-I, 2-II and 2-III PARTNERSHIPS**

Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, Inc., and Illinois Valley Cellular RSA 2-III Partnership (collectively “Illinois Valley Cellular” or “IVC”), by counsel, hereby provides comments on the request of the Illinois Commerce Commission’s (“ICC”) Petition for Waiver and Leave to File Certification of Eligible Telecommunications Carrier Out-of-Time (filed January 10, 2007) (“Petition”).

**I. Introduction**

In an order dated April 19, 2006, the ICC entered an order designating Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, Inc., and Illinois Valley Cellular RSA 2-III Partnership as Eligible Telecommunications Carriers (“ETCs”).<sup>1</sup> The Commission designated IVC as an eligible telecommunications carriers (“ETC”) for purposes of receiving high-cost support from the Federal Universal Service Fund (“FUSF”). At the time of its designation, IVC was under the impression that they were to self-certify to the FCC that they were eligible for high cost support

---

<sup>1</sup> *Order, Illinois Valley Cellular RSA 2-I, 2-II and 2-III Partnerships: Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996*, ICC Docket Nos. 04-0454/0455/0456(consol.) (April 19, 2006)

pursuant 47 C.F.R. § 54.314(d)(6) which states that telecommunications carriers newly designated are eligible for federal high cost support as provided for in 47 C.F.R. §§54.301, 54.305, and 54.307; and Part 36 of Subpart F of Chapter 47, 47 C.F.R. §§36.601-36.641, as of the effective date of its designation as an Eligible Telecommunications Carrier under section 214(e)(2) or (e)(6) of the Telecommunications Act of 1936, as amended, provided that a certification is provided to the FCC that the carrier will use such support only for the provision, maintenance or upgrading of the facilities or service for which the support is intended, within 60 days of the effective date of the carrier's designation as an Eligible Telecommunications Carrier. 47 C.F.R. §54.314. However, in April 2006 IVC's FCC counsel died unexpectedly and IVC was forced to obtain new counsel which ultimately clarified the rules for IVC and informed them that the rules required ICC to certify on IVC's behalf and that self-certification was not an option. However, by the time these facts came to light the 60 day filing window had closed.

## **II. DISCUSSION**

IVC supports ICC's Petition For Waiver and Leave to File a Late Filed Certification. The FCC has authority to waive its rules whenever there is "good cause" to do so. 47 C.F.R. 1.3; 1.925. Among other things, the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969) ("WAIT Radio"). As further explained in WAIT Radio, the Commission is charged with administration of its responsibilities consistent with the "public interest." That an agency may discharge its responsibilities by promulgating rules of general

application which, in the overall perspective, establish the "public interest" for a broad range of situations, does not relieve it of an obligation to seek out the "public interest" in particular, individualized cases. In fact, the Commission's right to waive its rules is not unlike an obligation in that it is a sine quo non-to its ability to promulgate otherwise rigid rules. It is the necessary "safety valve" that makes the system work. See, WAIT Radio at 1157, 1159.

In its Petition, the ICC shows that good cause clearly exists under the aforementioned circumstances. The ICC's failure to certify IVC resulted simply from a good faith interpretation of the rules that was not timely clarified due to the untimely and unexpected death of IVC's counsel. Furthermore, IVC's mistaken belief that they could self-certify was shared by the ICC because its designation of IVC was the first of its kind for a wireless carrier in Illinois. As noted in the ICC's Petition, this point was an administrative oversight at the ICC due to the fact that whether or not IVC could self-certify was unknown to the ICC, "inasmuch as IVC are the first eligible telecommunications carriers designated by the ICC that has ever required certification to receive federal high cost [support]."<sup>2</sup>

In addition, the public interest is served by grant of this Petition. Since the majority of newly designated ETCs are competitive carriers, strict enforcement of Section 54.314 would unfairly handicap new entrants, including carriers offering services using new technologies. Furthermore, denying high cost support funding to IVC on the basis of a late-filed certification would not serve the purpose of causing IVC to come into compliance with commitments made in its certifications.

---

<sup>2</sup> See, *Illinois Commerce Commission's Petition For Waiver and Leave To Filed Certification of Eligible Telecommunications Carrier Out-of-Time*, p. 3, (filed January 10, 2007)

The failure of the ICC to timely certify IVC has substantially harmed IVC's ability to perform its obligations as an ETC in Illinois. Strict application of the rule would effectively nullify the ICC's designation from its grant date in April 2006 through the remainder of the calendar year. The denial of support that would result would be inconsistent with the Commission's goal of competitive neutrality, which the Commission has stressed as a "fundamental principle of the Commission's universal service policies."<sup>3</sup> Additionally, the Commission has repeatedly recognized that designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas.<sup>4</sup> For newly designated ETCs, prompt commencement of high-cost support is crucial for constructing and upgrading networks to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service. The lack of high cost support in 2006 has impaired IVC's ability to commence projects that will expand and enhance its network in rural areas where few or no competitive telecommunication choices exist, as well as, provide current subscribers with improved service. These projects will not be commenced, or will be substantially delayed, if funding is not provided.

---

<sup>3</sup> *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*. CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003) ("Guamcell Waiver Order").

<sup>4</sup> See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18137 (2001) ("Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies."); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (2000) ("[C]ompetition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers . . . by creating incentives to ensure that quality services are available at 'just, reasonable, and affordable rates.'") (footnote omitted).

IVC is offering universal service to subscribers in rural Illinois, and is actively working to advance Lifeline and Link-up support in the state. Given that IVC has taken on the responsibilities of an ETC, it would be grossly unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request and consumers in rural Illinois who are expecting continued and rapid deployment of facilities would be harmed by its denial.

Furthermore, the Commission has granted similar requests.<sup>5</sup> Specifically, similar to the instant situation, the Commission granted to RFB Cellular, Inc. ("RFB") a limited waiver of, *inter alia*, the annual high-cost certification deadlines in Section 54.313(d) of the Commission's rules in order to allow RFB to begin receipt of high-cost universal service support from the date on which it received its ETC designation.<sup>6</sup> In deciding to grant RFB's waiver request, the Commission agreed that denying high-cost support to the newly-designated ETC merely because of the timing of its ETC designation would

---

<sup>5</sup> *In the Matter of Valor Telecommunications of Texas, L.P. Request for Revision of Decision of Universal Service Administrator; Petition for Waiver and/or Clarification of Filing Deadline in 47 C.F.R. Section 54.802(a)*, CC Docket No. 96-45, DA 06-73 (Released January 13, 2006); *In the Matter of Benton/Linn Wireless for Waiver of Section 54.307(c) of the Commission's Rules*, *Highland Cellular, Inc. Petition for Waiver Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules*, *Louisa Communications LLC Petition for Waiver of Section 54.802(a) of the Commission's Rules*, *Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(c) of the Commission's Rules*, *Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the Commission's Rules*, *United State Cellular Corporation Petition for Wavier of Section 54.307(c) of the Commission's Rules*, *Unity Telephone Company d/b/a Unitel, Inc. Petition for Wavier of Section 54.904(d) of the Commission's Rules*, *Wapsi Wireless, LLC Petition for Waiver of Section 54.307(c) of the Commission's Rules*, CC Docket 96-45, DA 05-3111 (Released November 29, 2005); *In the Matter of Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission's Rules and Regulations*, CC Docket 96-45, DA 01-1911 (Released August 15, 2001)

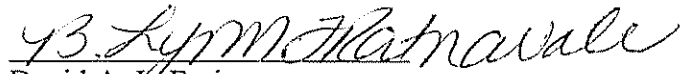
<sup>6</sup> *RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 02-3316 (WCB rel. Dec. 4, 2002) ("RFB Waiver Order").

undermine the FCC's well-established goal of competitive neutrality for universal service.<sup>7</sup>

### III. CONCLUSION

For the reasons set forth above, IVC supports the ICC's Petition and respectfully requests that the Commission grant the ICC a waiver of Section 54.314(d)(6). IVC asks the Commission to accept the ICC's late filed high cost support certification so as to permit the disbursement of high cost support to IVC for the period between April 19, 2006 and December 31, 2006

Respectfully Submitted,



David A. LaFuria

B. Lynn F. Ratnavale

Counsel for Illinois Valley Cellular  
RSA 2-I, 2-II and 2-III Partnerships

Lukas, Nace, Gutierrez & Sachs, Chtd.  
1650 Tysons Blvd #1500  
McLean, Virginia 22102  
(703) 584-8678  
(703) 584-8694 Facsimile

July 18, 2007

---

<sup>7</sup> *Id.* at ¶ 9.